

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TOMAS L. MENEWEATHER,

No. C 07-04204 SBA (PR)

Plaintiff,

v.

B. POWELL, et al.,

Defendants.

**ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL;  
GRANTING PLAINTIFF AN  
EXTENSION OF TIME TO FILE  
OPPOSITION TO DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT;  
AND ADDRESSING OTHER PENDING  
MOTIONS**

(Docket nos. 9, 38, 39)

This is a civil rights suit filed pro se by a state inmate. Defendants have filed a motion for summary judgment. Plaintiff has moved for appointment of counsel on grounds that he is "elderly" and "has a limited educational background." (Mot. for Appt. of Counsel at 1.) He has also moved for an "order of protection" because he claims that Defendants are "retaliat[ing] against him for filing the above entitled law suit and for filing a prison grievance . . . ." (Mot. for Order of Protection and Appt. of Counsel at 1.) Finally, also before the Court is Plaintiff's "Motion to Declare Null and Void Written Agreement With Daughter in this Case."

There is no constitutional right to counsel in a civil case. See Lassiter v. Dep't of Social Services, 452 U.S. 18, 25 (1981). 28 U.S.C. § 1915 confers on a district court only the power to "request" that counsel represent a litigant who is proceeding in forma pauperis. 28 U.S.C. § 1915(e)(1). This does not give the courts the power to make "coercive appointments of counsel." Mallard v. United States Dist. Court, 490 U.S. 296, 310 (1989).

The district court may ask counsel to represent an indigent litigant under § 1915 only in "exceptional circumstances," the determination of which requires an evaluation of both (1) the likelihood of success on the merits and (2) the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. See Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997); Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986). Both of these factors must be viewed together before reaching a decision on a request for counsel under § 1915. See id. Neither the need for discovery, nor the fact

1 that the pro se litigant would be better served with the assistance of counsel, necessarily qualify the  
2 issues involved as complex. See Rand, 113 F.3d at 1525 (where plaintiff's pursuit of discovery was  
3 comprehensive and focused and his papers were generally articulate and organized, district court did  
4 not abuse discretion in denying request for counsel).

5 Here, Plaintiff has been able to articulate his claims adequately pro se in light of the  
6 complexity of the issues involved, and the issues presented in Defendants' motion for summary  
7 judgment are straightforward. Accordingly, the Court finds that appointment of counsel is not  
8 necessary at this time. Plaintiff's motions for appointment of counsel (docket nos. 38, 39) are  
9 DENIED without prejudice.

10 The Court notes that Plaintiff has yet to file his opposition to Defendants' motion for  
11 summary judgment. While the Court has denied Plaintiff's requests for appointment of counsel, it  
12 finds that an extension of time for Plaintiff to file his opposition is warranted. Accordingly, the  
13 Court GRANTS Plaintiff an extension of time to file his opposition. The parties are directed to  
14 abide by the briefing schedule below.

15 Plaintiff has also moved for an "order of protection," which the Court will construe as a  
16 motion for leave to amend the complaint to add a new claim. Plaintiff alleges that on February 12,  
17 2009, prison medical staff at Salinas Valley State Prison "altered [his] pain medication order" in  
18 retaliation against him for filing this lawsuit and for filing a prison grievance. (Mot. for Order of  
19 Protection and Appt. of Counsel at 1.) However, the acts of which Plaintiff complained in his  
20 original complaint occurred at SVSP. The Court finds that the newly alleged retaliation claim is too  
21 far removed in time to be considered part of the claims originally raised. Therefore, leave to amend  
22 the complaint to add this claim is DENIED. If he so chooses, he may file a separate and new action  
23 raising this claim.

24 Finally, Plaintiff has filed a document entitled, "Motion to Declare Null and Void Written  
25 Agreement With Daughter in this Case." In that motion, Plaintiff claims he wrote a letter to his  
26 daughter, which indicated that any proceeds from this civil action "was to be divided between  
27 [Plaintiff], [his] grandchildren from [his daughter], and two grandsons from [his] deceased son."  
28 (Mot. to Declare Null and Void Written Agreement With Daughter in this Case at 1.) It appears that

1 Plaintiff has since changed his mind because he now requests the Court "to declare any and all legal  
2 entitlements based on that letter or any other [document] null and void and that all proceeds [from  
3 the instant action] . . . goes only to [Plaintiff] or an account by [his] choosing." (Id. at 2.) The  
4 proceedings are at an early stage, and it is premature for Plaintiff to file such a motion. Accordingly,  
5 Plaintiff's motion is DENIED without prejudice to renewing only if he succeeds in obtaining a  
6 recovery after this action has been resolved.

7 **CONCLUSION**

8 For the foregoing reasons, the Court orders as follows:

- 9 1. Plaintiff's motions for appointment of counsel (docket nos. 38, 39) are DENIED.
- 10 2. The Court GRANTS Plaintiff an extension of time to file his opposition to  
11 Defendants' motion for summary judgment. His opposition shall be filed no later than **thirty (30)**  
12 **days** from the date of this Order. If Defendants wish to file a reply brief, they shall do so no later  
13 than **fifteen (15) days** after the date Plaintiff's opposition is filed. **No further extensions of time**  
14 **will be granted in this case absent exigent circumstances.**
- 15 3. Plaintiff's motion for an "order of protection" (docket no. 38), which has been  
16 construed as a motion for leave to amend the complaint to add a new claim, is DENIED. If Plaintiff  
17 so chooses, he may file a separate and new action raising this claim. He must use the attached civil  
18 rights form and complete all sections of the form.
- 19 4. Plaintiff's "Motion to Declare Null and Void Written Agreement With Daughter in  
20 this Case" (docket no. 9) is DENIED without prejudice to renewing only if he succeeds in obtaining  
21 a recovery after this action has been resolved.
- 22 5. The Clerk of the Court shall send Plaintiff a blank civil rights form along with a copy  
23 of this Order.
- 24 6. This Order terminates Docket nos. 9, 38 and 39.

25 IT IS SO ORDERED.

26 DATED: 5/12/09

27   
28 SAUNDRA BROWN ARMSTRONG  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 TOMAS L MENEWEATHER,

5 Plaintiff,

6 v.

7 B POWELL et al,

8 Defendant.

Case Number: CV07-04204 SBA

**CERTIFICATE OF SERVICE**

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
10 Court, Northern District of California.

11 That on May 14, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
14 located in the Clerk's office.

15 Tomas Lopez Meneweather D35219  
16 Salinas Valley State Prison  
17 P.O. Box 1050  
18 Soledad, CA 93960

19 Dated: May 14, 2009

Richard W. Wieking, Clerk  
By: LISA R CLARK, Deputy Clerk